

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
SMS/800, Inc. Petition to Change the)	CC Docket No. 95-155
Composition of SMS/800, Inc.)	WC Docket No. 12-260

COMMENTS OF COMPTEL

COMPTEL, through undersigned counsel, hereby submits these comments in support of SMS/800, Inc.'s proposal to assume the role of neutral administrator of toll free numbers and to take over the role of filing and enforcing the tariff for 800 service management system ("SMS/800") services.

SMS/800, Inc. provides SMS/800 functions to Responsible Organizations (RespOrgs). It describes itself as the operations and administrative support system used for the creation and maintenance of call processing records for toll-free telephone numbers. SMS/800 is also the source of toll free number availability and reservation status information.¹ From the time of its creation through the present, SMS/800 has been a non-profit membership corporation whose only members have been the Bell Operating Companies ("BOCs"). BOC representatives are also the only Directors of the corporation. Consistent with the Commission's instructions, the BOCs have issued and filed the tariff setting forth the regulations, rates and charges applicable to the provision of SMS/800 functions and support services for the last 20 years.²

¹ SMS/800, Inc. Tariff F.C.C. No. 1, Section 2.1.

² *In the Matter of Provision of Access for 800 Service*, CC Docket No. 86-10, FCC 93-84, 8 FCC Rcd 1423 (1993) at ¶ 31.

Last September, SMS/800, Inc. filed a Petition To Change the Composition of SMS/800, Inc. SMS/800 has proposed to expand the membership and control of the corporation from the BOCs alone to the entire industry that is served by the 800 service management system. Membership would be open to all RespOrgs and Service Control Point (“SCP”) owner/operators. The Board seats would be filled by RespOrgs, SCPs, the corporation’s Chief Executive Officer and four independent directors not affiliated with other industry members or participants.³ All of the comments filed in response to the Petition supported the proposed changes in membership and control of the corporation.

The Commission has now asked for comment on SMS/800, Inc.’s proposals that the restructured corporation serve as the neutral administrator of the SMS/800 service, a role that is currently occupied by third party contractor Database Service Management, Inc. (“DSMI”) and that the corporation assume authority for issuing, filing and enforcing the SMS 800 tariff, a role that is currently played by the three BOCs. COMPTTEL supports both proposals.

Neutral Administrator. Assuming that the Commission grants the Petition to expand the membership and governance of the corporation, SMS/800 also proposes to have the restructured corporation assume the role of neutral administrator of the SMS/800 service management system.⁴ As the corporation’s filings demonstrate, the restructured corporation would not be aligned with any industry segment and would otherwise meet the impartiality requirements set forth in section 52.12 of the Commission’s Rules.⁵

³ SMS/800, Inc. Petition To Change The Composition of SMS/800, Inc. filed in WC Docket No. 12-260 on September 13, 2012.

⁴ *Id.*

⁵ *Id.* at 16-20; November 20, 2012 Letter of Aaron M. Panner to Marlene Dortch filed in WC Docket No. 12-260.

The Commission has previously determined that the SMS/800 tariff is designed to ensure that the administration of toll free numbers is competitively neutral and that the Administrator cannot exercise discretion to administer the numbers in a manner inconsistent with the tariff. The Commission has also previously determined that the tariff and the Commission's rules ensure that the Administrator performs its activities as overseer of the day to day management of the SMS/800 system without discrimination.⁶

DSMI, as the business representative of the BOCs, currently performs the administrative duties relating to toll-free number administration, including the day to day management and oversight of SMS/800 services.⁷ DSMI summarized the major roles and responsibilities it has performed as neutral administrator of the SMS/800 service to include (1) monitoring of toll-free number utilization data; (2) monitoring of SMS/800 resource utilization data; (3) monitoring SMS/800 functionality to assure assignment of toll free numbers on a neutral and first come, first served basis to all RespOrgs; and (4) providing the Commission planning and monitoring updates so as to assure accurate and timely Commission review and guidance on impending matters.⁸

Like DSMI, the restructured SMS/800 corporation will be subject to the Commission's rules and will be bound by the terms of the SMS/800 tariff in performing the administrative functions relating to the management and oversight of SMS/800 services. The tariff and the Commission's rules will ensure that the restructured corporation performs the administrative

⁶ *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155, Fifth Report and Order, FCC 00-237 at ¶¶ 26, 41 (rel. July 5, 2000).

⁷ *Id.*

⁸ Comments of Database Service Management, Inc. on SMS/800, Inc.'s Petition To Change the Composition of SMS/800, Inc.

functions in a competitively neutral and nondiscriminatory fashion. The Commission will retain ultimate oversight of the restructured corporation and the administration of toll free numbers. Based on these factors, the Commission should approve SMS/800's proposal that the restructured corporation be allowed to serve as neutral administrator of the 800 service management system.

Tariffing Function. Again assuming the Commission grants SMS/800's Petition to expand the membership and governance of the corporation, it only makes sense that the responsibility and authority to issue, file and enforce the tariff for SMS 800 services be transferred from the BOCs to the corporation. The Commission determined long ago that (1) 800 SMS access is a Title II common carrier service incidental to telecommunications transmission and that as such, (2) it should be offered pursuant to a single tariff and that (3) the BOCs should issue that tariff.⁹ At the time it made these determinations, "the BOCs control[ed] all fundamental aspects of SMS access."¹⁰ The BOCs will no longer be in control of access to the service management system once membership in the corporation is open to all RespOrgs and SCPs, and the governing board is expanded to include RespOrgs, SCPs and independent directors.

SMS/800, Inc. proposes to file a Section 214 transfer of control application to transfer authorization to manage and operate the SMS/800 access service from the BOCs to the restructured corporation.¹¹ Once the restructured corporation assumes control of the SMS/800 access service, the corporation will be providing the 800 SMS access service in accordance with

⁹ *In the Matter of Provision of Access for 800 Service*, CC Docket No. 86-10, FCC 93-84, 8 FCC Rcd 1423 (1993) at ¶¶29, 31.

¹⁰ *Id.* at ¶31.

¹¹ Petition at 10-15.

the Commission's rules and the terms of the SMS/800 tariff. With the BOCs relinquishing control of the SMS/800 access service to the restructured corporation, the restructured corporation will have to assume responsibility for issuing, filing and enforcing the tariff in order to be held accountable for and to bill and collect for the common carrier SMS/800 access services it will be providing.¹²

Conclusion

For the foregoing reasons and those stated in SMS/800, Inc.'s Petition and subsequent *Ex Parte* filings, the Commission should grant the Petition, approve the plan to restructure the composition of SMS/800, Inc. to make membership in and control of the corporation representative of the industry segments that use the 800 service management system and allow the restructured corporation to assume the administrative and tariffing functions that are currently performed by or at the direction of the BOCs alone.

Respectfully submitted,

/s/

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¹² See Section 203 of the Communications Act, 47 U.S.C. § 203.